

1 **WAKANAKISING ODAWAK STATUTE**
2 **AMENDMENT TO WAGANAKISING ODAWAK STATUTE # 2013-010**
3 **FAIR EMPLOYMENT**
4
5

6 **SECTION I. REPEAL**
7

8 **SECTION XIV. EMPLOYEE HOURS**
9

10 **A.** Hourly employees are paid at their regular rate of pay and are paid for all
11 hours worked.
12

13 **B.** Hourly employee shall not be employed for a workweek longer than forty
14 (40) hours unless such employee receives overtime compensation for the
15 employee's employment in excess of forty (40) hours at a rate not less than one
16 and one-half times the regular rate at which the employee is employed or the
17 employee may choose compensatory time (also referred to as Paid Time Off,
18 PTO) for hours worked in excess of forty (40) hours worked in a work week at a
19 rate not less than one and one-half times the hours worked in excess of forty (40).
20

21 **C.** Law Enforcement personnel may work under a "14 day work period".
22 Under a 14 day work period, a police officer is due overtime pay only if, when
23 and to the extent actual hours worked exceed 80 hours in the 14 day work period.
24

25 **D.** Exempt employees shall not receive overtime for hours worked in excess
26 of forty (40) hours worked in a work week.
27

28 **E.** Exempt employees are generally executive employees, administrative
29 employees, outside sales employees, learned professional employees, computer
30 employees, creative professional employees, highly compensated employees, and
31 meet the following:
32

1 **1.** Executive Employee whose primary duty is management of the
2 enterprise or a recognized department or subdivision. Customarily and
3 regularly directs the work of two or more other employees; AND has
4 authority to hire or fire other employees, OR the employee's suggestions as
5 to hiring, firing, promotion or other change of status of other employees
6 are given particular weight.

7
8 **2.** Administrative employee whose primary duty is the performance
9 of office or nonmanual work directly related to the management or general
10 business operations of the employer or the employer's customers. Primary
11 duty includes the exercise of discretion and independent judgment with
12 respect to matters of significance. Customarily and regularly exercises
13 discretionary powers and independent judgment in performing the job.

14
15 **3.** Outside Sales employee whose primary duty is making sales or
16 obtaining orders or contracts for services, or for the use of facilities for
17 which a consideration will be paid by the client or customer. The
18 employee is customarily and regularly engaged away from the employer's
19 place or places of business. The salary requirements of this section does
20 not apply.

21
22 **4.** Learned Professional employee whose primary duty is the
23 performance of work requiring advanced knowledge, defined as work
24 which is predominantly intellectual in character, requiring the consistent
25 exercise of discretion and judgment. The advanced knowledge must be in
26 a field of science or learning and customarily acquired by a prolonged
27 course of specialized intellectual instruction.

28
29 **5.** Computer employee whose primary duty of

30
31 **a.** application of systems analysis techniques and procedures,
32 including consulting with users, to determine hardware, software
33 or system functional applications;

- 1 **b.** design, development, documentation, analysis, creation,
2 testing, or modification of computer systems or programs,
3 including prototypes, based on and related to user or system
4 design specifications;
5 **c.** design, documentation, testing, creation or modification of
6 computer programs related to machine operating systems; or
7 **d.** a combination of duties described in (a.), (b.), and (c.), and
8 the performance of which requires the same level of skills.

9
10 **6.** Creative professional employee whose primary duty is the
11 performance of work requiring invention, imagination, originality, or
12 talent in a recognized field of artistic or creative endeavor.

13
14 **7.** Highly compensated employee whose is paid at least \$455/week
15 on a salary or fee basis and have a total annual compensation of \$100,000
16 or more and customarily and regularly perform at least one of the duties of
17 an exempt executive, administrative, or professional employee.

18
19 **F.** For the purposes of interpreting and enforcing this section, the Tribal
20 Court may look to the FLSA and regulations thereunder as well as relevant case
21 law for guidance, provided however that nothing in this Statute shall be construed
22 as an adoption by the Tribe of the FLSA, nor a waiver of sovereign immunity
23 from suit for any claims or process under the FLSA.

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26 **SECTION II. REPLACE**

27
28 **SECTION XIV. EMPLOYEE HOURS**

29
30 **F.** Hourly employees are paid at their regular rate of pay and are paid for all
31 hours worked.

1 **G.** Hourly employee shall not be employed for a workweek longer than forty
2 (40) hours unless such employee receives overtime compensation for the
3 employee's employment in excess of forty (40) hours at a rate not less than one
4 and one-half times the regular rate at which the employee is employed or the
5 employee may choose compensatory time (also referred to as Paid Time Off,
6 PTO) for hours worked in excess of forty (40) hours worked in a work week at a
7 rate not less than one and one-half times the hours worked in excess of forty (40).
8

9 **H.** Law Enforcement personnel may work under a "14 day work period".
10 Under a 14 day work period, a police officer is due overtime pay only if, when
11 and to the extent actual hours worked exceed 80 hours in the 14 day work period.
12

13 **I.** Exempt employees shall not receive overtime for hours worked in excess
14 of forty (40) hours worked in a work week.
15

16 **J.** Exempt employees are generally executive employees, administrative
17 employees, outside sales employees, learned professional employees, computer
18 employees, creative professional employees, highly compensated employees, and
19 meet the following:
20

21 **8.** Executive Employee whose primary duty is management of the
22 enterprise or a recognized department or subdivision. Customarily and
23 regularly directs the work of two or more other employees; AND has
24 authority to hire or fire other employees, OR the employee's suggestions as
25 to hiring, firing, promotion or other change of status of other employees
26 are given particular weight.
27

28 **9.** Administrative employee whose primary duty is the performance
29 of office or nonmanual work directly related to the management or general
30 business operations of the employer or the employer's customers. Primary
31 duty includes the exercise of discretion and independent judgment with
32 respect to matters of significance. Customarily and regularly exercises
33 discretionary powers and independent judgment in performing the job.

1
2 **10.** Outside Sales employee whose primary duty is making sales or
3 obtaining orders or contracts for services, or for the use of facilities for
4 which a consideration will be paid by the client or customer. The
5 employee is customarily and regularly engaged away from the employer's
6 place or places of business. The salary requirements of this section does
7 not apply.

8
9 **11.** Learned Professional employee whose primary duty is the
10 performance of work requiring advanced knowledge, defined as work
11 which is predominantly intellectual in character, requiring the consistent
12 exercise of discretion and judgment. The advanced knowledge must be in
13 a field of science or learning and customarily acquired by a prolonged
14 course of specialized intellectual instruction.

15
16 **12.** Computer employee whose primary duty of

17
18 **e.** application of systems analysis techniques and procedures,
19 including consulting with users, to determine hardware, software
20 or system functional applications;

21 **f.** design, development, documentation, analysis, creation,
22 testing, or modification of computer systems or programs,
23 including prototypes, based on and related to user or system
24 design specifications;

25 **g.** design, documentation, testing, creation or modification of
26 computer programs related to machine operating systems; or

27 **h.** a combination of duties described in (a.), (b.), and (c.), and
28 the performance of which requires the same level of skills.

29
30 **13.** Creative professional employee whose primary duty is the
31 performance of work requiring invention, imagination, originality, or
32 talent in a recognized field of artistic or creative endeavor.
33

1 **14.** Employee whose is paid at least \$913 per week (\$47,476 for a full-
2 year worker) or more; and customarily and regularly perform at least one
3 of the duties of an exempt executive, administrative, or professional
4 employee.
5

6 **15.** Employee who has an annual earnings are \$134,004 or more which
7 may include commissions, nondiscretionary bonuses and other
8 nondiscretionary compensation earned; and customarily and regularly
9 perform at least one of the duties of an exempt executive, administrative,
10 or professional employee.
11

12 **G.** Employers may count nondiscretionary bonuses, incentives, and
13 commissions toward up to 10 percent of the required salary level for the standard
14 exemption, so long as employers pay those amounts on a quarterly or more
15 frequent basis.
16

17 **H.** For the purposes of interpreting and enforcing this section, the Tribal
18 Court may look to the FLSA and regulations thereunder as well as relevant case
19 law for guidance, provided however that nothing in this Statute shall be construed
20 as an adoption by the Tribe of the FLSA, nor a waiver of sovereign immunity
21 from suit for any claims or process under the FLSA.
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24 **SECTION III. EFFECTIVE DATE**

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26 Effective upon signature of the Executive or 30 days from Tribal Council
27 approval whichever comes first or if the Executive vetoes the Statute, then upon Tribal
28 Council override of the veto, but shall not be implemented until January 1, 2017.
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CERTIFICATION